

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Saleh Elghassen,
Plaintiff,
v.
RBS Computer, Inc., d/b/a Royal Management
Corporation; and Experian Information Solutions,
Inc.
Defendants.

Case No.: 2:14-cv-01539-JAD-GWF

Order Granting RBS Computer's Motion to Dismiss for Lack of Personal Jurisdiction [#19]

Defendant RBS Computer Inc., a Texas corporation whose only office is in Texas, moves to dismiss this Fair Credit Reporting Act case for lack of personal jurisdiction.¹ RBS does not conduct business in Nevada. It does not own any property in Nevada. It does not have any employees who work in Nevada or direct communications to Nevada. Nor does it have a Nevada bank account. In short, RBS does not have sufficient minimum contacts with Nevada to justify haling it here to defend this case. I therefore grant RBS's motion to dismiss.

Discussion

A. Establishing Specific Jurisdiction over an Extra-territorial Defendant

The Due Process Clause of the Fourteenth Amendment limits a court's power to bind a non-resident defendant to a judgment in the state in which it sits.² As the Supreme Court explained in the seminal personal-jurisdiction case of *International Shoe v. Washington*, "Although a non-resident's physical presence within the territorial jurisdiction of the court is not required" for the exercise of personal jurisdiction, "the nonresident generally must have certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."³ "[T]he defendant's conduct and connection with the forum State [must be] such that he

Doc. 19.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980).

³ *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (internal quotations omitted).

1 should reasonably anticipate being haled into court there.”⁴

2 The parties agree that specific, not general, personal jurisdiction is at issue here. Specific
 3 jurisdiction depends on an “activity or an occurrence that takes place in the forum State and is
 4 therefore subject to the State’s regulation.”⁵ The Ninth Circuit has established a three-prong test for
 5 specific jurisdiction:

6 (1) the non-resident defendant must purposefully direct its activities or
 7 consummate some transaction with the forum or resident thereof, or
 8 perform some act by which it purposefully avails itself of the privilege
 9 of conducting activities in the forum, thereby invoking the benefits and
 10 protections of its laws;

11 (2) the claim must be one that arises out of or relates to the defendant’s
 12 forum-related activities; and

13 (3) the exercise of jurisdiction must comport with fair pair play and
 14 substantial justice—in other words, it must be reasonable.⁶

15 Elghassen bears the burden of satisfying the first two prongs. If they are satisfied, the burden then
 16 shifts to RBS to show why the exercise of personal jurisdiction would be unreasonable.⁷

17 **B. Elghassen Has Not Demonstrated Sufficient Minimum Contacts for this Court to
 18 Exercise Specific Jurisdiction over RBS.**

19 **1. Elghassen has not demonstrated that RBS has purposefully availed itself of the
 20 privileges of conducting activities in Nevada.**

21 The purposeful-availment requirement “ensures that a defendant will not be haled into a
 22 jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity
 23 of another party or a third party; the requirement is but a test for determining the more fundamental
 24 issue of whether defendant’s conduct and connection with the forum state are such that he should
 25 reasonably anticipate being haled into court there.”⁸ The key question is one of due process: would it

26 ⁴ *World-Wide Volkswagen*, 444 U.S. at 297.

27 ⁵ *Goodyear Dunlop Tires Oper. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

28 ⁶ *Schwarzenegger v. Fred Martin Motor Co.*, 374 F. 3d 797, 801 (9th Cir. 2004.)

⁷ *Id.*

⁸ *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1397 (9th Cir. 1986).

1 be fair, based on RBS's contacts with Nevada, for it to expect to have to defend itself in a Nevada
 2 court?

3 I find that it would not be fair. RBS is a Texas corporation whose only office is in Texas. It
 4 does not conduct business in Nevada. It does not own any property in Nevada. It does not have any
 5 employees who work in Nevada or direct communications to Nevada. Nor does it have a Nevada
 6 bank account. Elghassen undervalues these facts and focuses instead on his own contacts with
 7 Nevada and the effect RBS's alleged violation would have on him in this state.⁹

8 In *Walden v. Fiore*, however, the Supreme Court underscored the importance of a defendant's
 9 own, direct contacts with the forum state in the specific-jurisdiction analysis. The Court reversed a
 10 Ninth Circuit opinion finding that the Nevada District Court could exercise specific personal
 11 jurisdiction over a Georgia police officer who, while working as a deputized DEA agent at a Georgia
 12 airport, searched a Nevada-bound couple and seized almost \$97,000 in cash representing legitimate
 13 gambling proceeds.¹⁰ The officer then drafted in Georgia what was alleged to be a false and
 14 fraudulent affidavit of probable cause to support a potential forfeiture action for the seized funds.¹¹

15 The Ninth Circuit sitting *en banc* found that Nevada could exercise personal jurisdiction over
 16 the Georgia officer for purposes of the couple's *Bivens* action against him by focusing on the
 17 officer's knowledge of the couple's "strong forum connections" and the "foreseeable harm" that the
 18 officer's conduct in Georgia would cause them in Nevada.¹² The problem with this approach to
 19 minimum contacts analysis, the Supreme Court explained, is that it

20 impermissibly allows a plaintiff's contacts with the defendant and
 21 forum to drive the jurisdictional analysis. [The officer's] actions in
 22 Georgia did not create sufficient contacts with Nevada simply because
 23 he allegedly directed his conduct at plaintiffs whom he knew had
 Nevada connections. Such reasoning improperly attributes a plaintiff's
 forum connections to the defendant and makes those connections
 'decisive' in the jurisdictional analysis. It also obscures the reality that

24
 25 ⁹ See Doc. 26 at 6-7.

26 ¹⁰ *Id.* at 1119.

27 ¹¹ *Id.* at 1124.

28 ¹² *Id.* (quoting *Fiore v. Walden*, 688 F.3d 558, 577-579, 581 (9th Cir. 2011)).

1 none of [the officer's] challenged conduct had anything to do with
 2 Nevada itself.¹³

3 *Walden* emphasizes "it is the defendant, not the plaintiff or third parties, who must create contacts
 4 with the forum State"¹⁴ and focuses the minimum-contacts analysis on "the defendant's contacts with
 5 the forum State itself, not the defendant's contacts with persons who reside there."¹⁵ In short, "[t]he
 6 plaintiff cannot be the only link between the defendant and the forum."¹⁶

7 Elghassen has not demonstrated that there is a strong enough link between RBS and Nevada
 8 to justify making RBS come here to defend itself. The purposeful-availment prong has not been
 9 satisfied.

10 **2. Elghassen has not demonstrated that his claim arises out of activities RBS
 11 conducted in Nevada.**

12 Nor has Elghassen demonstrated that his claim arises from forum-related activities.

13 Elghassen claims that RBS provided certain inaccurate information to defendant Experian,¹⁷ a
 14 national credit reporting agency with a principal place of business in Ohio.¹⁸ He also claims that
 15 RBS received notification from Experian of [Elghassen]'s dispute regarding the information and
 16 failed to remove the inaccurate information and/or added additional derogatory information to
 17 [Elghassen's] credit.

18 But Elghassen has not demonstrated that these alleged actions occurred in Nevada or were
 19 directed at Nevada. All of the actions Elghassen claims RBS committed would have occurred in
 20 Texas, where its only office is, and any communication RBS had with Experian would have occurred

22 ¹³ *Id.* at 1124-25 (internal citations omitted).

23 ¹⁴ *Id.* at 1126.

24 ¹⁵ *Walden*, 134 S. Ct. at 1122.

25 ¹⁶ *Id.*

26 ¹⁷ See Doc. 8 at ¶¶16, 26-27, 31-32. Elghassen has resolved his claims against Experian.
 27 See Doc. 30.

28 ¹⁸ *Id.* at ¶13.

1 outside of Nevada because Experian does not have an office in Nevada. Accordingly, Elghassen has
2 not shown his claim arose out of RBS's forum-related activities.

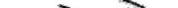
3. Because Elghassen has not satisfied the first two prongs of the minimum contacts analysis, I need not consider the third prong.

5 Elghassen has the burden of satisfying the first two prongs of the minimum-contacts analysis.
6 He has not satisfied either of them. Therefore, I need not consider the third prong.¹⁹

Conclusion

8 Accordingly, it is **HEREBY ORDERED** that Defendant RBS Computer's Motion to
9 Dismiss for lack of personal jurisdiction [Doc. 19] is **GRANTED**; all claims against RBS are hereby
10 dismissed. As the dismissal of all claims against RBS leaves no other claims pending, the Clerk of
11 Court is directed to close this case.

12 DATED: June 4, 2015


JENNIFER A. DORSEY
UNITED STATES DISTRICT JUDGE

26 ¹⁹ This prong, too, heavily favors RBS given the absence of any “purposeful injection” by it
27 into Nevada’s affairs and the significant burden it would face if forced to defend itself in
28 Nevada, where it has no offices or employees. *See Terracom v. Valley Nat. Bank*, 49 F.3d 555,
561 (9th Cir. 1995) (identifying the factors courts should consider when determining the third
prong of a minimum contacts analysis).